IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A.No.583 SB of 1995
Date of decision: 3.4.2007

Aslam Khan and another

…..Appellants

v.

State of Punjab

…..Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

Present: Mr. HS Riar, Sr. Advocate with Mr. DPS Kahlon, Advocate, for the appellants.

Mr. JS Dhillon, DAG, Punjab.

JUDGMENT:

This appeal has been preferred by the appellants accused against their conviction under sections 307/324/34 IPC, for which they have been sentenced to undergo RI for five years and to pay fine of Rs.3000/- each, in default, to undergo further RI for six months. Fine is to be paid as compensation to the injured Bashir Khan.

Case of the prosecution is that on 28.6.1993, at about 12 noon, Bashirkhan was at his house with his brother Zamilkhan, his wife Zoran and sister-in-law Vakilan. The accused Mohd. Ali alias Kala and Aslam Khan alias Kaka, who were step brothers of Bashirkhan, came to his house, armed with 'gandasas'. Kala gave a

'lalkara' saying that Bashirkhan was not to be spared for taking the land. Bashirkhan alongwith his brother, wife and sister-in-law came out of the house, Aslamkhan gave 'gandasa' blow to Vakilan on her head. Mohd. Ali gave 'gandasa' blow to Zoran, who received blow on her left arm. Aslam gave another blow from reverse side of 'gandasa' to Zoran on her left arm and right leg. Zamilkhan intervened to save Zoran. Aslamkhan gave a 'gandasa' blow on the head of Zamil and Mohd. Ali gave 'gandasa' blow to Zamil, who raised left hand and received the same. Mohd. Ali gave another blow to Zamil, which he received on his right hand. Mohd. Ali also gave reverse side 'gandasa' blow to Zamil on his left hand. Aslamkhan gave three 'gandasa' blows from reverse side to Zamil on his left arm and right shoulder. Zamilkhan fell down. When his brother came forward to rescue him, Aslamkhan gave 'gandasa' blow to Bashirkhan on his hand. He also gave a blow on the head of Bashirkhan. On alarm being raised, the accused escaped. The injured were taken to the hospital and were medically examined. Thereafter, FIR was registered and after investigation, the accused were challaned.

The defence of the accused is of false implication. They examined Harinawaz DW1 and Sitarkhan, DW2.

In support of its case, the prosecution examined PW1 Dr. Amar Singh Azad, PW Bashirkhan, Zamilkhan PW3, Vakilan

PW4, Swaranjit Singh ASI PW5 and gave up Zoran PW as being unnecessary, tendered into evidence report of Chemical examiner Ex.PX, copies of judgments Exs. PY and PZ and closed prosecution evidence.

Dr. Amar Singh Azad PW1 conducted medico legal examination of Bashirkhan on 28.6.1993 at 1 PM and found following injuries:-

> "1.An incised wound 7 x 1.5 x 1.5cms on the front of head, above the anterior hair line. Profusely bleeding with corresponding cut on the periosteum and out lamella of the cranial bone measuring 4 x .5 x 0.25 cms.
> 2. an incised wound 3 x 1 x 1 cm on the front of head, adjacent to injury No.1 x-ray was advised.
> 3. An incised wound 8 x 1.5 x 1.5 cms on the front of head, adjacent to injury No.2. X-ray was advised.
> 4. An incised wound 2 x 1x1 cm on the front of head, adjacent to injury No.3. X-ray was advised.
> 5. An incised wound on the side of head 5 x 1x1 cm profusely bleeding. X-ray was advised.
> 6. An abrasion 5 x 3 cms on the left cheek Fresh bleeding was present.
> 7. A lacerated wound 4x2x1 cm on the dorsum of left hand. X-ray was advised.
> 8. An incised wound 2x4x1.5 cm on the top of right shoulder. Profusely bleeding. X-ray was advised.
> 9. A contusion 4 x 3 cms on the right

hypochondriun, red in colour. X-ray was advised."

The doctor opined that if Bashir Khan had not been given immediate medical aid, he could have died.

Injury No.1 was grievous. Injury Nos. 1 to 5 and 8 were by sharp-edged weapon, while the remaining were by blunt weapon.

The said witness also examined Zoran, wife of Bashir Khan and found following injuries:-

"1. A diffuse swelling on the front, back and lateral side of lower part of left forearm with pain and tenderness. X-ray was advised.
2. An incised wound 1 x 0.5 cm x 2 cms on the front of forearm and profusely bleeding. X-ray was advised.
3. A contusion 12 x 1.5 cm on the middle of lateral side of right leg. X-ray was advised."

Injury No.2 was by sharp-edged weapon while the remaining were by blunt weapon.

He also examined Zamilkhan and found following injuries:-

"1. 3 x 1 x1 an incised wound on the top of head with fresh and profuse bleeding. X-ray was advised.
2. A lacerated wound 7 x 2 x 1 cms on the left palm between the thumb and index finger

profusely bleeding. X-ray was advised.

3. An incised wound 2 x ¾ x ¾ cm on the ventral side of left middle finger, profusely bleeding .X-ray was advised.
4. An incised wound 2 x ¾ x ¾ cm on the ventral side of right thumb, profusely bleeding. X-ray was advised.
5. Multiple abrasions (four) 5 x 1 to 7 x 1 cm, red in colour on the back of left forearm.
6. An abrasion 2 x 1 cm red in colour on the right scapular region.
7. A contusion 1 cm x 1 cm on the top of right shoulder."

Injury Nos. 1, 3 and 4 were by sharp-edged weapon while the remaining were by blunt weapon.

He also examined Vakilan and found following injury:-

"1.An incised wound 4 x 1 x 1 cm on the top of head, profusely bleeding and x-ray was advised."

The injury was by sharp-edged weapon.

PW2 Bashirkhan, PW3 Zamilkhan and PW4 Vakilan, all injured witnesses, fully supported the case of the prosecution, which was corroborated by medical evidence. Swaranjit Singh ASI PW5 proved investigation conducted by him.

After considering the evidence on record, the trial court held that the case of the prosecution was proved beyond reasonable doubt. It was held that the evidence of Bashirkhan, Zamilkhan and

Vakilan was consistent and reliable and they were stamped witnesses. The defence plea was not probable. They were immediately examined by the doctor and, thus, delay in lodging the FIR was duly explained.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellants submitted that there was delay of 24 hours in lodging the FIR. The occurrence took place on 28.6.1993 at 12 noon, while the FIR was registered on 29.6.1993 at 1.45 PM. It was also argued that relatives and the witnesses were interested persons and the opinion of the doctor that but for medical aid, Bashirkhan would have died, was given belatedly. It was also submitted that the appellants had undergone six months of custody and liberal view on sentence may be taken having regard to long pendency of proceedings.

It is clear from the record that the occurrence took place in broad day light. The injured were taken to the hospital and were examined by the doctor within one hour of the occurrence. The doctor sent a ruqa to the police station immediately. The Investigating Officer also arrived at the hospital but did not record FIR, as all the injured were declared unfit to make statement and it was only on the next day, after they were declared fit to make statement, FIR as recorded on the statement of Bashirkhan Ex.PQ.

The nature and extent of injuries on Bashirkhan clearly show that the accused intended to cause death. Injured Bashirkhan had multiple severe head injuries and was profusely bleeding with corresponding cut on the head. Injury No.1 was declared grievous. Injury Nos. 1 to 5 and 8 were caused with sharp-edged weapon. Apart from injuries to Bashirkhan, the accused also caused injuries to his wife Zoran, one of which was by sharp-edged weapon and to his brother Zamilkhan. One of the injuries on Zamilkhan was on the head and two other injuries were also by sharp-edged weapon. Injury on Vakilan was also by sharp-edged weapon. There is no discrepancy in the version given by PW2 Bashirkhan, PW3 Zamilkhan and PW4 Vakilan and there is no reason to disbelieve their version. Injuries could not have been self-suffered. There is no dispute about identity. The place of occurrence was the house of the injured persons. Case of the prosecution, thus, stands fully proved on the oral testimony, which is fully corroborated by medical evidence.

In ***Tara Singh and others*** ***v.*** ***The State of Punjab*** AIR 1991 SC 63, it was observed:-

> **"4.** It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is,

> the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay..."

In ***Dalip Singh*** **v.** ***State of Punjab*** (AIR 1953 SC 364) it has been laid down as under:-

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish

> to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

The above judgment has been followed in subsequent judgments of the Hon'ble Supreme Court in **Guli Chand v. State of Rajasthan** (1974 (3) SCC 698), **Vadivelu Thevar v. State of Madras,** AIR 1957 SC 614, and **Masalti v. State of UP**, AIR 1965 SC 202. Reference may also be made to judgment of the Hon'ble Supreme Court in **Gangadhar Behera v. State of Orissa,** AIR 2002 SC 3633, Paras 11 to 14.

Conviction of all the appellants is, thus, fully justified.

As regards sentence, even though, the sentence awarded by the trial court cannot be held to be excessive, having regard to all the circumstances, the substantive sentence is reduced to RI for

three years, subject to the appellants paying compensation of Rs.20,000/- each to be shared by the four injured, in addition of fine of Rs.3000/- each, already awarded by the trial court. Compensation may be paid within six months from today, either to the injured persons and receipt filed before the trial court or the amount may be deposited before the trial court and the trial court will disburse the same to the injured persons. In default of payment of compensation, the appellants will undergo further RI for one year each.

The appeal is disposed of.

April 3, 2007 (Adarsh Kumar Goel)
'gs' Judge